

MEMORANDUM OF PHILIP MORRIS INCORPORATED  
TO THE FEDERAL TRADE COMMISSION REGARDING  
INVESTIGATION OF THE BARCLAY FILTER

I. THE COMMISSION'S INDEPENDENT EXPERTS HAVE UNANIMOUSLY  
CONCLUDED THAT THE BARCLAY FILTER SUBVERTS THE  
COMMISSION'S CIGARETTE TESTING PROGRAM.

Over the past ten months, the Commission has conducted a thorough investigation to determine whether the Commission's current testing methodology accurately assesses the "tar" and nicotine delivery of cigarettes using the Barclay-type filter. Extensive data and reports have been submitted by cigarette company research laboratories, outside consultants and ~~dis-~~ <sup>independent</sup> ~~tinguished~~ testing organizations. This material has been painstakingly reviewed by three <sup>eminent</sup> ~~of the country's foremost~~ experts in tobacco science, who were ~~selected and retained~~ <sup>by the Commission itself</sup>, for the purpose of obtaining totally objective, independent evaluations of the copious material presented in this investigation.

The results are now in, and the conclusion of the Commission's experts is unanimous and unequivocal: The bypass filter employed on Barclay cigarettes -- and now being <sup>used</sup> ~~installed~~ by Brown & Williamson on other heavily promoted brands -- ~~is a fraud. Unlike any other filter on the mar-~~ ~~ket, this filter~~ functions one way in the Commission's

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smoking machine and in a radically different way in the smoker's lips. It is designed to exploit a loophole in the current FTC testing methodology to produce a <sup>smoking</sup> machine ranking in the ultra-low <sup>- delivery</sup> ~~tar~~ range, when, in fact, it delivers many times more "tar" <sup>[Other constituents?]</sup> to the smoker than other cigarettes with the same machine ranking. In short, the Barclay-type filter <sup>is</sup> ~~has~~ <sup>ing</sup> subverted the Commission's <sup>cigarette</sup> ~~smoking~~ ~~testing methodology~~ ~~ing machine~~ and, unless prompt corrective action is taken, it will continue to do so.

The eminent scientists retained by the Commission have expressed their evaluation of the Barclay filter in clear, strong and unambiguous terms:

Dr. Lynn T. Kozlowski:

"I think that serious question does exist about Barclay and, further, I think that no additional research is needed to demonstrate that Barclay presents greater risks of high tar and nicotine yields to smokers than do other ultra-low tar brands." (Kozlowski, "Report on Barclay," p. 1.)

"To summarize, I think that Barclay is not properly assayed by the FTC method and that it delivers tar and

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nicotine to smokers out of proportion to its ranking on the FTC lists." (Id., p. 15.)

~~"In my opinion, the PM, RJR, and B&W research strongly support the conclusion that Barclay delivers tar and nicotine out of proportion to the FTC rating. The ventilation system of the Barclay-type filter is susceptible to a special mode of compromise. The problem of these air-dilution channels creates a new loophole in the FTC method." (Kozlowski, "Supplemental Report on Barclay," last page.)~~

Dr. Michael R. Guerin:

"It is my carefully considered opinion that the contention of <sup>J</sup>~~RJR~~ and PM is correct in that the current FTC method does not appropriately rank the delivery of cigarettes containing a Barclay-type filter." (Guerin, letter of March 12, 1982, p. 1.)

~~"I am convinced that cigarettes containing the Barclay-type filter are inappropriately ranked by the current FTC testing method." (Id., p. 5.)~~

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"I feel very strongly that the Commission should take steps to discourage the use of the Barclay-type filter or modify the testing procedure to more appropriately rank such products." (Id., p. 6.)

~~"I continue to feel that cigarettes fitted with the type of filter employed with the Barclay brand behave differently in the FTC machine than in the lips of a human smoker. In my opinion, the current FTC methodology underestimates the delivery of Barclay-type cigarettes." (Guerin, letter of March 19, 1982.)~~

Dr. Fred G. Bock:

~~"The preponderance of evidence indicates that Barclay cigarettes deliver more tar to smokers than would be expected on the basis of tar and nicotine levels determined by the current FTC method." (Bock report, p. 1.)~~

"The data presented with respect to ventilation is convincing that Barclay cigarettes are smoked in a unique manner by humans. This behavior is apparently a consequence of filter design." (Id., p. 14.) <sup>Bock report</sup>

"The preponderance of data thus indicates that the present FTC tar and nicotine yield values of Barclay cigarettes are misleading." (Id.)

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There can be no question as to the qualifications<sup>or the</sup> objectivity ~~or thoroughness~~<sup>g</sup> of the distinguished scientists retained by the Commission to review the technical material submitted in this investigation. Nor can there be any question as to the reasonableness and fairness of the process established by the Commission to resolve the scientific questions presented. That process has resulted in a clear-cut, unanimous conclusion that the current FTC testing methodology does not accurately rank brands using the Barclay-type filter. The time has now come for strong remedial action.

II. PROMPT REMEDIAL ACTION IS REQUIRED TO REDRESS THE DECEPTION PERPETRATED BY USE OF THE BARCLAY-TYPE FILTER.

The Commission should take immediate action to protect the integrity of its "tar" and nicotine testing program. The Commission should take measures which will both dissipate the effects of the deceptive actions by Brown & Williamson and prevent the continuation or the recurrence of such actions. ~~The following factors are relevant~~<sup>94</sup> in determining the remedial measures which should be taken with respect to the Barclay filter<sup>94</sup>, the Commission should keep in mind that

inform the smoking public of Barclay's duplicitous character and to

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<sup>best</sup>  
sold 9 billion Barclay cigarettes  
(cite) and has reportedly

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~~First~~, Brown & Williamson has been aware since at least November 1980, that the Barclay filter distorts the dilution and, therefore, the "tar" <sup>tar constituents?</sup> yield, measured by the Commission's testing procedures. <sup>\*/</sup> Moreover, the present proceeding has been pending for nearly ten months, since June 1981. During all of this time, Brown & Williamson has spent ~~substantially~~ <sup>5</sup> in excess of \$100 million dollars <sup>(cite)</sup> in advertising and promoting the ultra ~~low~~ <sup>Rider A</sup>

~~low tar yield of Barclay~~ <sup>Rider B</sup> -- a claim which the Commission's experts unanimously conclude is untrue and unfounded. <sup>^</sup>

~~Second, the Barclay filter was deliberately designed to deceive the Commission's testing apparatus. The unanimous views of the Commission's experts supports this conclusion.~~

(no #) An additional factor in determining appropriate remedial action is <sup>the certainty that,</sup> if the Commission does not immediately take vigorous actions, <sup>of Rider C</sup> other companies <sup>are thereby given</sup> ~~will be encouraged in~~ <sup>facit encouragement</sup> the future to evade and ~~sabotage~~ <sup>subvert</sup> the "tar" testing program.

<sup>received & demonstration</sup>  
\*/ Brown & Williamson has acknowledged that it ~~was~~ <sup>of Philip Morris's</sup> apprised by Philip Morris in November 1980 ~~that there were serious and substantial questions regarding the operation of the Barclay filter in the lips of human smokers. See, Submission to the FTC on Behalf of Brown & Williamson Corp., dated October 23, 1981, at p. 11.~~ <sup>dilution measuring device and other evidence</sup>

In light of the foregoing, Philip Morris respectfully submits that the Commission should promptly take the following remedial actions:

First, the Commission should forthwith issue a public announcement stating that it has determined, on the basis of unanimous reports from independent experts retained by the Commission, who are ~~among the country's~~ leading authorities in the field of tobacco science, that the "tar"<sup>[and nicotine?]</sup> yield of cigarettes using the Barclay-type filter is not accurately measured by the present FTC method. This announcement should state that all of the experts consulted by the Commission agree that Barclay yields substantially higher "tar" than advertised by Brown & Williamson, or reported by the FTC in its "Report of 'Tar', Nicotine and Carbon Monoxide of the Smoke of 200 Varieties of Cigarettes," dated December 15, 1981. The smoking public is entitled to be immediately informed of the experts' conclusion.

Second, the Commission should <sup>officially</sup> ~~issue an order (or announcement)~~ stating that the Commission is amending its December 1981 report to delete the "tar" ~~yields~~ <sup>results</sup> shown

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Rider D

therein for the various varieties of Barclay cigarettes.

[nicotine?]

The "tar" figures set out in the ~~Commission's December~~

~~1981~~ report are not accurate, for the reasons stated by

the Commission's expert consultants, Rider E

Third, Brown & Williamson should be ~~ordered~~ <sup>directed</sup> by

sket

the Commission forthwith, with respect to Barclay and all other brands using the Barclay-type filter: (a) to

cease making any direct or indirect representations in

its advertising, packaging or promotional materials as

to the cigarette's <sup>[or nicotine?]</sup> "tar" yield ~~per FTC method~~; (b) to

~~cease and desist from making any representation or adver-~~

tising claim that <sup>including</sup> ~~the cigarette~~ <sup>any such product</sup> is 99% "tar" free; and

(c) to incorporate a clear and conspicuous statement in

all advertising, in lieu of the <sup>Rider F</sup> ~~present representation~~

~~as to "tar,"~~ to the effect that the cigarette's "tar" <sup>[and nicotine?]</sup>

delivery is <sup>substantially higher than indicated</sup> ~~not properly determinable~~ by present FTC

methods.

Fourth, if Brown & Williamson does not forth-  
with comply with such <sup>direction</sup> ~~order~~, the Commission should promptly  
file suit against Brown & Williamson in a federal district  
court pursuant to 15 U.S.C. § 53, to obtain an

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injunction ordering the remedies described in the foregoing paragraph<sup>9</sup> and such additional relief as may be appropriate to dissipate the effects of Brown & Williamson's false and misleading claims.

Fifth, Brown & Williamson should be ordered by the Commission forthwith to recall all cigarette packages and cartons presently in the market containing a legend or statement of Barclay's "tar"<sup>\*</sup> yield ~~per FTC method~~.

~~Such statements are false and misleading.~~ In addition, Brown & Williamson should be directed forthwith to recall and destroy <sup>advertising</sup> all ~~point of sale~~ and ~~other~~ promotional materials which contain a statement of Barclay's "tar"<sup>\*</sup> yield. The same relief should be granted with respect to all other brands which use the Barclay-type filter and make "tar" representations on packages, cartons or point-of-sale material.

Sixth, the Commission's laboratory should promptly replace the cigarette holding device presently used in its apparatus with the holding device which has been proposed by Philip Morris. in order to insure valid and reliable comparative "tar" results for all cigarette brands on the market,

\* nicotine?

[to the maximum extent practicable]

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~~market.~~ All cigarette manufacturers should be immediately notified of this modification and should thereafter be required to report "~~tar~~" results "by FTC method" only in accordance with test results obtained using this holding device.

As to "Sixth":

- ① This remedy requires an amendment to the method, at least by publication in the Federal Register and probably only after inviting public comments. Simply telling lab to change holder might not stand up. Perhaps we should admonish FTC to adopt PM holder on an interim basis immediately and to take immediate action to render the modification permanent.
- ② Should we refer to the fact that the PM holder can be easily adjusted to achieve any "average" dilution level on tar delivery?

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Rider A

as an ultra low "tar" brand. In particular, every pack [and carton?] of Barclay king-size varieties carries a bold claim that the product delivers "1 mg tar"

Rider B

The problem posed by Barclay has been further compounded during the pendency of this matter by Brown & Williamson's introduction of two additional product lines featuring the same bypass filter.

Rider C

its "tar" and nicotine reporting program will be further and perhaps fatally compromised as

Rider D

The notice of such amendment should be published in the Federal Register and should be accompanied by the explanation that

Rider E

and that the "tar" [and other?] deliveries of Barclay and other products incorporating a bypass filter are not properly determinable by present FTC method.

Rider F

disclosure required by the voluntary agreement, and on every pack and carton of any such product

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